

**JOHN DOES #1-3, individually and on  
behalf of others similarly situated,**

**Plaintiffs,**

**v.**

**WILLIAM B. LEE, Governor  
of the State of Tennessee, and  
DAVID B. RAUSCH,  
Director of the Tennessee Bureau of  
Investigation, and TONY C. PARKER,  
Commissioner of the Tennessee  
Department of Correction,  
in their official capacities,**

**Defendants.**

Case 3:19-cv-00532 Document 41 Filed 01/13/20 Page 1 of 5 PageID #: 255

concluded that “neither party will be prejudiced by a stay.” *Id.* Likewise, the relevant factors here weigh in favor of the stay requested.

Plaintiffs are wrong to assert that any legislative change illustrates “perverse incentives.” A legislative action is presumptively legitimate and “the new legislation could just as credibly be viewed as a commendable effort to repair what may have been a constitutionally defective statute.” *Khodara Envtl., Inc. v. Beckman*, 237 F.3d 186, 195 (3d. Cir. 2001) (J. Alito) (citation and quotations omitted). It could otherwise be deemed “responsible lawmaking.” *Id.* See also *Fed. Of Advertising Indust. Reps., Inc. v. City of Chicago*, 326 F.3d 924 (7th Cir. 2003) (rejecting assertions that the City’s actions were disingenuous and stating that repeal of ordinance likely revealed the City’s “desire to avoid substantial litigation costs by removing a potentially unconstitutional law from the books”). Indeed, legislative changes to statutes that result in a case becoming moot are not uncommon. See, e.g., *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 474 (1990); *U.S. Dep't of Treasury, Bureau of Alcohol, Tobacco & Firearms v. Galioto*, 477 U.S. 556, 559 (1986); *Khodara Envtl., Inc.*, 237 F.3d at 194-5; *Kentucky Right to Life, Inc. v. Terry*, 108 F.3d 637 (6th Cir. 1997); *Jones v. Haynes, III*, No. 17-5846, 736 Fed. Appx. 585, 590 (6th Cir. June 5, 2018) (affirming this Court’s determination that the case was moot).

Plaintiffs’ logic that this Court should decide the constitutional issue to deter the legislature from alleged “future abuses of legislative power” is flawed. It is counter to the well-established “Supreme Court precedent [which] makes it clear that courts should avoid unnecessary adjudication of constitutional issues.” *Adams v. City of Battle Creek*, 250 F.3d 980, 986 (6th Cir. 2001) (citing *Ashwander v. Tennessee Valley Auth.*, 297 U.S. 288, 347 (1936)). See also *Jones*, 2017 WL 1397212 at \*4. It is also contrary to judicial efficiency because Plaintiffs ask this Court to devote time and resources to an issue that could become moot in the course of judicial

determination. Moreover, there is the possibility that any determination by this Court could be vacated by the Sixth Circuit if the legislation is enacted while on appeal. *See Stewart v. Blackwell*, 473 F.3d 692, 693 (6th Cir. 2007) (“vacatur [is] generally appropriate to avoid entrenching a decision rendered unreviewable through no fault of the losing party”). *See also, e.g., U.S. v. Munsingwear*, 340 U.S. 36, 39 (1950) (established practice in appeal that has become moot is vacatur of judgment below and remand for dismissal); *Khodara Envtl., Inc.*, 237 F.3d at 194-5 (equity is served by vacating judgment holding statute facially unconstitutional when congress repealed challenged statute while appeal pending); *Chem. Producers & Distribs. Ass’n v. Helliker*, 463 F.3d 871, 879-80 (9th Cir. 2006) (vacating lower court’s judgment and concluding that the statutory amendment mooted the case cannot be attributed to the party regardless of its legislative advocacy for the amendment) (overruled on other grounds). *Cf. Ford v. Wilder*, 469 F.3d 500, 506 fn.10 (6th Cir. 2006) (holding that vacatur is unwarranted when legislative-branch defendants mooted the case but noting that cases with executive-branch defendants may render a different determination of responsibility and outcome)

## CONCLUSION

For the reasons stated, Defendants respectfully request that their motion for stay be granted.

Respectfully Submitted,

HERBERT H. SLATERY III  
Attorney General and Reporter

s/ Dianna Baker Shew  
Dianna Baker Shew, BPR # 12793  
Senior Assistant Attorney General  
Office of the Attorney General and Reporter  
P.O. Box 20207  
Nashville, TN 37202-0207  
dianna.shew@ag.tn.gov  
(615) 532-1969

s/ Stephanie A. Bergmeyer  
Stephanie A. Bergmeyer, BPR # 27096  
Senior Assistant Attorney General  
Office of the Tennessee Attorney General  
P.O. Box 20207  
Nashville, TN 37202-0207  
stephanie.bergmeyer@ag.tn.gov  
(615) 741-6828

## CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing was filed electronically and served through the electronic filing system on this the 13th day of January 2020, upon the following:

W. Justin Adams  
Bone McAllester Norton PLLC  
511 Union Street, Suite 1600  
Nashville, Tennessee 37219  
[wjadams@bonelaw.com](mailto:wjadams@bonelaw.com)

Kyle F. Mothershead  
The Law Office of Kyle Mothershead  
414 Union Street, Suite 900  
Nashville, Tennessee 37219  
[kyle@mothersheadlaw.com](mailto:kyle@mothersheadlaw.com)

Benjamin K. Raybin  
Raybin & Weissman, P.C.  
424 Church Street, Suite 2120  
Nashville, Tennessee 37219  
[braybin@nashvilletnlaw.com](mailto:braybin@nashvilletnlaw.com)

Patrick T. McNally  
Weatherly, McNally & Dixon, PLLC  
424 Church Street, Suite 2260  
Nashville, Tennessee 37219  
[pmcnally@wmdlawgroup.com](mailto:pmcnally@wmdlawgroup.com)

s/ Stephanie A. Bergmeyer  
Stephanie A. Bergmeyer